



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,353	10/16/2001	Mark Day	3330/50	6716

29858 7590 09/08/2004

BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP
900 THIRD AVENUE
NEW YORK, NY 10022

EXAMINER

PHAN, JOSEPH T

ART UNIT	PAPER NUMBER
----------	--------------

2645

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,353

Applicant(s)

DAY, MARK

Examiner

Joseph T Phan

Art Unit

2645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-18 rejected under 35 U.S.C. 102(e) as being anticipated by

Fraccaroli, Patent #6,549,768.

Regarding claims 1 and 10, Fraccaroli teaches a method and program code for informing remote clients as to the presence status of a device, the method comprising: recording a presence status of a first device to create an observed presence profile(*col.4 lines 12-63 and col.9 line 25-col.10 line 15; an observed presence profile is created each time the subscriber registers/is recorded in a new cell area and his/her location profile is updated*).

comparing the observed presence profile with one or more model presence profiles to compute a closest matching model presence profile[*col.5 lines 4-48 and col.10 lines 40-51; the newly registered presence profile(entering subscriber) is compared to other model presence profiles(other mobile subscribers) in the same area and Fraccaroli's server computes a closest matching profile of the two mobile subscribers*]; and

transmitting information representing the closest matching model presence profile to one or more devices(*col.10 line 40-col.11 line 11; transmits prompt and dials number information of the closest presence profile to a mobile subscriber*).

Regarding claims 2 and 11, Fraccaroli teaches the method and program code of claims 1 and 10, the method comprising:

dividing a block of time into one or more discrete time periods, recording the first device's presence status over the time period; and creating an observed presence profile from the first device's recorded presence status(*col.4 lines 12-63*).

Regarding claims 3 and 12, Fraccaroli teaches the method and program code of claims 1 and 10 comprising comparing the observed presence profile with the model presence profiles when requested by the one or more devices(*col.9 line 25-col.10 line 67*).

Regarding claims 4 and 13, Fraccaroli teaches the method and program code of claims 1 and 10 comprising comparing the observed presence profile with the model presence profiles according to a schedule (*col.9 line 25-col.10 line 67*).

Regarding claims 5 and 14, Fraccaroli teaches the method and program code of claims 1 and 10 wherein the step of transmitting is executed when requested by the one or more devices(*col.9 line 25-col.10 line 67*).

Regarding claims 6 and 15, Fraccaroli teaches the method and program code of claims 1 and 10 wherein the step of transmitting is executed according to a schedule(*col.9 line 25-col.10 line 67*).

Regarding claims 7 and 16, Fraccaroli teaches the method and program code of claims 1 and 10 wherein the step of transmitting information comprises transmitting a status code representing the closest matching model presence profile(col.9 line 25-col.11 line 10).

Regarding claims 8-9 and 17-18, Fraccaroli teaches the method and program code of claims 1 and 10 comprising applying a pattern detection algorithm(Fast Fourier Transformation) to compare the observed presence profile with one or more model profiles to compute the closest matching model presence profile(col.9 line 25-col.10 line 67; FFT is an old and very well-known algorithm).

Response to Arguments

2. Applicant's arguments filed 06/14/04 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an observed profile is a description of the device's behavior over a period of time or a model profile which is a notion of a user's activities) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

After further review and consideration, Examiner still maintains that the rejected claim 1 above with examiners interpretation of an observed and model presence profile still reads on the claims as recited. See examiners notes in parenthesis for more clarification, more description of an observed presence profile and a model presence

profile is needed.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph T Phan whose telephone number is 703-305-3206. The examiner can normally be reached on M-TH 9:00-6:30, in every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on 703-305-4895. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTP

September 7, 2004

JTP



Carla J. Smith, Esq.
Primary Examiner